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JUL 25 2006

OFFICE OF PETITIONS

In re Patent of Khosla et al. :
Patent No. 6,916,790 : Decision on Request for Reconsideration
Issue Date: July 12, 2005 : of Patent Term Adjustment
Application No. 09/972,809 : and Notice of Intent to Issue
Filing Date: October 5, 2001 : Certificate of Correction
Attorney Docket No. 07039-322001 :
:

This is a decision in response to the "Application For Patent Term Adjustment Under 37 CFR 1.705(D)" filed September 14, 2005, which in essence requests that the Patent Term Adjustment for the above-identified patent be set at two hundred ninety-four (294) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of two hundred ninety-four (294) days.

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed with the Notice of Allowance on May 13, 2004, stated the patent term adjustment to date was 72 days.

On August 12, 2004, patentees filed the issue fee, a request under 37 CFR 1.705(b), and documents to support the petition under 37 CFR 1.705(b). The request was granted May 16, 2005, and the Office manually increased the patent term adjustment by 10 days.

The application matured into Patent No. 6,916,790 on July 12, 2005. The printed patent shows a Patent Term Adjustment of 83 days. The revised adjustment determination was calculated as follows:

The initial determination of PTA of 82 days was increased 10 days per the May 16, 2005 decision and 211 days for Office delay in issuing the patent. The determination was reduced 120 days and 90 days, for the filing, after allowance, of "supplemental papers - oath or declaration" and a "miscellaneous incoming letter."

Patentees first contend an increase of 212 days, rather than 211 days, is proper pursuant to 37 CFR 1.703(a)(6). The 211 day increase resulted from the Office using August 13, 2004, as the date the issue fee was submitted. However, patentees have established the issue fee was submitted August 12, 2004. Therefore, an increase of 212 days is appropriate.

Patentees contend the reduction of 120 days for the "miscellaneous incoming letter" filed on August 12, 2004, and the reduction of 90 days for the "supplemental papers - oath or declaration" were improper. Patentees' contention is well taken.

A review of the PALM calculations for this patent reveals that the determination of PTA was reduced by 90 days for applicant's submission of "supplemental papers - oath or declaration" on *November 10, 2004*. However, a review of the application record supports a conclusion that the supplemental papers were actually filed in the application on *August 12, 2004*, with the request under 37 CFR 1.705(b).

The "miscellaneous incoming letter" and the "supplemental papers - oath or declaration" were filed as part of the request under 37 CFR 1.705(b). A review of the record indicates the supplemental papers were, in essence, exhibits to the request under 37 CFR 1.705(b). 37 CFR 1.704(e) states,

Submission of an application for patent term adjustment under § 1.705(b) (with or without request under § 1.705(c) for reinstatement of reduced patent term adjustment) will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraph (c)(10) of this section.

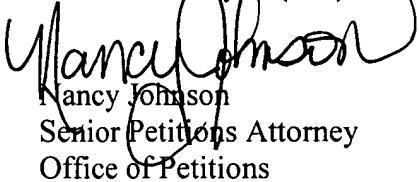
In view of 37 CFR 1.704(e), the reduction of 120 days and 90 days, for a total of 210 days, was improper.

The patent term should have been increased 212 days, rather than 211, pursuant to 37 CFR 1.703(a)(6) and should not have been reduced by 210 days pursuant to 37 CFR 1.704(c)(10). In other words, the patent term adjustment indicated on the patent should have been two hundred ninety-four (294) days.

The patent term adjustment indicated on the patent will be corrected to 294 days by way of issuance of a Certificate of Correction pursuant to 35 U.S.C. 254 and 37 CFR 1.322.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by TWO HUNDRED NINETY-FOUR (294) days subject to any disclaimers.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,916,790 B1

APPLICATION NO.: 09/972,809

ISSUE DATE : July 12, 2005

INVENTOR(S) : Khosla et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (83) days

Delete the phrase "by (83) days" and insert -- by (294) days--